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No. 96-1487

In the Supreme Court of the United States

OCTOBER TERM, 1996

UNITED STATES OF AMERICA, PETITIONER

v.

HOSEP KRIKOR BAJAKAJIAN

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

BRIEF FOR THE UNITED STATES

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QUESTION PRESENTED

Whether 18 U.S.C. 982(a)(1) violates the Excessive Fines Clause of the Eighth Amendment insofar as it subjects to criminal forfeiture currency that is about to be transported out of the United States without the filing of the currency report required by 31 U.S.C. 5316.

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BRIEF FOR THE UNITED STATES

OPINION BELOW

The opinion of the court of appeals (Pet. App. 1a-14a) is reported at 84 F.3d 334.

JURISDICTION

The judgment of the court of appeals was entered on May 20, 1996. A petition for rehearing was denied on November 18, 1996. On February 7, 1997, Justice O'Connor extended the time for filing a petition for a writ of certiorari to and including March 18, 1997. A petition for a writ of certiorari was filed on March 18, 1997, and it was granted on May 27, 1997. The jurisdiction of this Court rests on 28 U.S.C. 1254(1).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The relevant constitutional and statutory provisions are included in an appendix to the brief.

STATEMENT

On his plea of guilty in the United States District Court for the Central District of California, respondent was convicted on one count of willfully failing to report the transportation of $357,144 out of the United States, in violation of 31 U.S.C. 5316(a) and 5322(a). The district court held that, although 18 U.S.C. 982(a)(1) required the court to order respondent to forfeit the unreported currency to the United States, the imposition of a forfeiture greater than $15,000 would violate the Excessive Fines Clause of the Eighth Amendment. The court thus ordered a forfeiture in the latter amount. Pet. App. 16a-19a. The court of appeals affirmed, holding that the forfeiture of any of the unreported currency as a sanction for a reporting violation is unconstitutional. *Id.* at 1a-14a.

1. a. With certain limited exceptions, Title 31, Section 5316 requires a person who "transports, is about to transport, or has transported, monetary instruments of more than $10,000" outside the country to file a report with the Secretary of the Treasury. The report (Customs Form 4790) asks for the person's name and address, the kind of currency transported, the value of the currency, and, if the person is acting on someone else's behalf, the name and address of that person. Congress imposed the currency reporting requirement after concluding that such a report has "a high degree of usefulness in criminal,

tax, or regulatory investigations or proceedings." 31 U.S.C. 5311.

The House Report to the Bank Secrecy Act of 1970, Pub. L. No. 91-508, 84 Stat. 1114, discusses the circumstances that led to the enactment of Section 5316. The Report notes that "[f]or years American criminal elements ha[d] been taking or sending currency out of the United States either in furtherance of a criminal activity or for deposit in a secret foreign haven." H.R. Rep. No. 975, 91st Cong., 2d Sess. 13 (1970). The money had come from "criminal activities, skim money from gambling operations and the like." *Ibid.* In addition, "many Americans ha[d] used couriers to send money to foreign jurisdictions with secrecy laws for the purpose of evading taxes and otherwise hiding assets." *Ibid.*

Those secretive activities produced "debilitating effects * * * on Americans and on the American economy." H.R. Rep. No. 975, *supra*, at 12. "[H]undreds of millions in tax revenues [were] lost." *Ibid.* "[U]nwanted credit" was "pumped into our markets." *Ibid.* Corporate officers "enriched themselves" and "endangered the financial soundness of their companies to the detriment of their stockholders." *Ibid.* And "[c]riminals engaged in illegal gambling, skimming, and narcotics traffic [were] operating their financial affairs with an impunity that approach[ed] statutory exemption." *Ibid.*

Investigators of those activities were "in an impossible position." H.R. Rep. No. 975, *supra*, at 12. They were required to "subject themselves to a time consuming and ofttimes fruitless foreign legal process," and "[e]ven when procedural obstacles [were] overcome, the foreign jurisdictions rigidly enforce[d] their secrecy laws against their own domestic

institutions and employees." *Ibid.* By enacting Section 5316 and other requirements, Congress sought to close that "serious investigative loophole." *Id.* at 13.

b. To ensure compliance with Section 5316's reporting requirement, Congress devised a series of complementary civil and criminal enforcement mechanisms. On the civil side, Congress provided that, "[i]f a report required under section 5316 with respect to any monetary instrument is not filed (or if filed, contains a material omission or misstatement of fact), the instrument and any interest in property, including a deposit in a financial institution, traceable to such instrument may be seized and forfeited to the United States Government." 31 U.S.C. 5317(c). Congress also authorized civil forfeiture of "[a]ny property, real or personal, involved in a transaction or attempted transaction in violation of section [5316], or any property traceable to such property." *Ibid.* (referring to violation of 31 U.S.C. 5324(b), which in turn incorporates a failure to file a report required by Section 5316). In addition, "[t]he Secretary of the Treasury may impose an additional civil penalty on a person not filing a report, or filing a report containing a material omission or misstatement, under section 5316." 31 U.S.C. 5321(a)(2). The amount of the fine "may not be more than the amount of the monetary instrument for which the report was required," and "is reduced by an amount forfeited under section 5317." *Ibid.*

On the criminal side, a person who "willfully" violates the currency reporting requirement is guilty of a felony, and "shall be fined not more than $250,000, or imprisoned for not more than five years, or both." 31 U.S.C. 5322(a). Under 18 U.S.C. 982(a)(1), the provi-

sion at issue here, "[t]he court, in imposing sentence on a person convicted of an offense in violation of [the currency reporting requirement], shall order that the person forfeit to the United States any property, real or personal, involved in such offense, or any property traceable to such property." Property "involved in [the] offense" includes the money that is not reported, any commissions or fees paid to the person transporting the money, and property used to facilitate the offense. See 134 Cong. Rec. S17,365 (daily ed. Nov. 10, 1988) (interpreting the language in 18 U.S.C. 982(a)(1) before Section 5316 was added to the list of offenses leading to criminal forfeiture); 136 Cong. Rec. 11,197-11,198 (1990) (explaining that amendment adding Section 5316 offenses to the list of offenses subject to criminal forfeiture is intended to parallel the criminal forfeiture sanctions for the other offenses listed in 18 U.S.C. 982(a)(1)).

Under the statutory scheme, a district court does not have discretion to reduce the amount of a civil or criminal forfeiture. Congress entrusted to the Secretary of the Treasury and to the Attorney General the responsibility to decide the circumstances under which such a reduction would be warranted. The Secretary of the Treasury has authority to "remit any part of a [civil] forfeiture," 31 U.S.C. 5321(c), and the Attorney General is authorized to "grant petitions for mitigation or remission of [criminal] forfeiture." 21 U.S.C. 853(i)(1) (applicable to forfeitures under 18 U.S.C. 982(a)(1) by virtue of 18 U.S.C. 982(b)(1)).

2. a. On June 9, 1994, respondent Hosep Bajakajian was in Los Angeles International Airport, waiting to board a flight to Syria. With the assistance of a canine, U.S. Customs inspectors located approxi-

mately $140,000 concealed in respondent's checked luggage and another $90,000 in a false bottom of one of his bags. An inspector then approached respondent and his family in the airport and informed them that they were required to report all money in their possession and in their luggage that exceeded $10,000. Respondent told the inspector that he had $8,000 and that his wife had $7,000. Pet. App. 2a-3a; Plea Agreement 7 (Oct. 27, 1994) (Stipulated Statement of Facts).

Customs inspectors eventually discovered $357,144 concealed by respondent and his wife. After respondent was advised of his rights, he admitted to Customs agents that he knowingly and willfully failed to report the cash. Pet. App. 3a.

b. On July 8, 1994, respondent was indicted in the United States District Court for the Central District of California. He was charged with one count of failing to report the export of currency in excess of $10,000, in violation of 31 U.S.C. 5316(a)(1)(A) and 5322(a); one count of making a false material statement to the United States Customs Service, in violation of 18 U.S.C. 1001; and one count of criminal forfeiture of the undeclared funds under 18 U.S.C. 982(a)(1). Pet. App. 3a.

On October 27, 1994, respondent pleaded guilty to the exporting unreported currency count and agreed to a bench trial on the forfeiture count. The government agreed to dismiss the false statement count at sentencing. Pet. App. 3a.

At the bench trial on the forfeiture count, the parties proffered evidence that respondent had given three different explanations about the source of the funds he had concealed. Respondent first told Customs agents that a friend named Abe Ajemian had lent him approximately $200,000, that approximately

$28,000 was his own, and that various friends and relatives had lent him the remaining $130,000. Gov't Trial Mem. 5 (filed Nov. 28, 1994). Ajemian told Customs agents, however, that he had not lent respondent $200,000. *Id.* at 5-6. Respondent then claimed that Saeed Faroutan lent him $170,000. *Id.* at 6. Faroutan, however, told Customs agents that he had made no such loan and that respondent had asked him to lie about it. *Ibid.* Respondent finally claimed that Ajemian and six others had provided $185,000 and that the rest belonged to him. Def. Trial Mem. 2-3 (filed Dec. 15, 1994). Respondent also claimed that he owed money to his cousin and that he had intended to travel to Cyprus to deliver the money to his cousin. *Id.* at 3.

Following the bench trial, the district court found that the entire $357,144 discovered by Customs agents was involved in respondent's offense, and that those funds were therefore subject to forfeiture under 18 U.S.C. 982(a)(1). Pet. App. 16a. At sentencing, however, the court ordered respondent to forfeit only $15,000, ruling that forfeiture of more than that amount would be "grossly disproportionate" to respondent's culpability and therefore unconstitutional under the Excessive Fines Clause of the Eighth Amendment. *Id.* at 17a-18a. The court stated:

> I do believe that the United States currency was in the suitcase and in the carry-on luggage for reasons that were not illegal. I do believe that, even though it's a somewhat suspicious and confused story, documented in the poorest way, and replete with past misrepresentation, that the funds were * * * borrowed funds.
>
> * * * * *

> And I think the evidence has developed that [respondent's] state of mind * * * grew out of * * * distrust for the Government. * * * So, the amount of forfeiture will be modest, and will be very very minor, because in truth, and, in fact, I think none should be forfeited.

Ibid. The court also sentenced respondent to three years' probation and fined him $5,000. *Id.* at 18a-19a.

3. The court of appeals affirmed. Pet. App. 1a-14a. The court applied a two-part test under which a forfeiture is constitutional under the Excessive Fines Clause only if "(1) the property forfeited is an 'instrumentality' of the crime committed, and (2) the value of the property is proportional to the culpability of the owner." *Id.* at 5a. The court held that the money concealed by respondent failed to satisfy the instrumentality component of that test. The court reasoned that money involved in a violation of Section 5316 can never be an instrumentality of that offense, because "[t]he crime is the withholding of information * * * not the possession or the transportation of the money." *Id.* at 6a.

The court concluded that its holding did not conflict with this Court's decision in *One Lot Emerald Cut Stones* v. *United States*, 409 U.S. 232 (1972) (per curiam), which, in rejecting a double jeopardy claim, upheld as remedial the civil forfeiture of gems that had not been declared when the owner brought them into the country. Pet. App. 7a-8a. The court believed that the smuggled gems in *One Lot Emerald Cut Stones* were "contraband," but that the money involved in a currency reporting violation is not. *Id.* at 8a. The court further stated that the "key difference," is that "a violation of § 5316 merely deprives

the government of information, whereas the smuggling of goods across the border deprives the government of revenue." *Ibid.*

Having concluded that a forfeiture constitutes an excessive fine unless the forfeited property was an instrumentality of an offense, and that money involved in a violation of Section 5316 is not an instrumentality of that offense, the court held that "[f]orfeiture of any amount" of respondent's undeclared money "would be unconstitutionally excessive under * * * [the] Excessive Fines Clause." Pet. App. 9a. The court affirmed the judgment of the district court ordering the forfeiture of $15,000 only because respondent had failed to cross appeal and therefore could not challenge the district court's judgment. *Id.* at 9a-10a.

Judge Wallace concurred in the judgment of affirmance, but disagreed with the majority's Eighth Amendment analysis. Pet. App. 10a-14a. Judge Wallace concluded that money involved in a violation of Section 5316 is an instrumentality of that offense, because "without the currency, there can be no offense." *Id.* at 13a. In ruling otherwise, Judge Wallace emphasized, "the majority strikes down a portion of 18 U.S.C. 982(a)(1), thereby unduly limiting the government's forfeiture powers." *Id.* at 10a. Judge Wallace nonetheless voted to affirm the district court's judgment, because he concluded that the district court did not commit clear error in finding that a $15,000 forfeiture was proportional to respondent's culpability. *Id.* at 13a-14a.

The government's petition for rehearing and suggestion for rehearing en banc were denied. Judge Wallace voted to grant both the petition for rehearing

and the suggestion for rehearing en banc. Pet. App. 15a.

SUMMARY OF ARGUMENT

Respondent was convicted and sentenced for the felony of willfully failing to file a required currency report as he was about to leave the United States with $357,144 in cash. The court of appeals concluded that the forfeiture of that undeclared cash—or of any cash involved in a failure-to-report violation—constitutes an excessive fine, in violation of the Eighth Amendment. That holding is incorrect. The criminal forfeiture of currency that is not declared as required by federal law is not an "excessive fine" within the meaning of the Eighth Amendment.

A. Throughout this nation's history, Congress has provided for forfeiture as a sanction for the improper use of property in the commission of offenses. The First Congress provided for enforcement of the customs laws by authorizing the forfeiture of property imported without proper declaration. Later forfeiture laws reached a variety of forms of property used or involved in a criminal offense. This Court has consistently rejected constitutional challenges to such forfeitures, and the long history of such statutes provides strong support for the proposition that they are not "excessive" fines.

The forfeiture of such instrumentalities of crime (*i.e.*, property used or involved in the commission of an offense) is a proportionate sanction because, apart from any punitive purpose such forfeitures might serve, they serve important remedial aims. They encourage property owners to take care that their property does not become involved in crime; they prevent further use of the property in crime; and they

impose an economic sanction that renders crime less profitable. In view of those purposes, the forfeiture of the instrumentalities of crime, whether in a civil or criminal proceeding, is a proportionate remedy. It is the property's involvement in the offense that justifies such a remedial forfeiture; the Eighth Amendment does not require an additional inquiry into the culpability of the owner or the property's economic value.

The forfeiture of the undeclared currency involved in a reporting offense is justified on that basis. The currency is an indispensable instrumentality of the failure-to-report offense. The offense requires proof that cash is being transported (or is about to be transported); without the involvement of the cash, there is no offense. Forfeiture of the cash also serves the traditional remedial goals of instrumentality forfeitures. The remedy prevents the use of unreported cash to conceal or further criminal activity, and it encourages travelers to report information that is critical in the investigation of domestic and international crime. Finally, the sanction is precisely tailored to the magnitude of the violation; the greater the amount of cash that is transported without declaration, the greater the potential harm posed by the unlawful activity.

B. The forfeiture of the undeclared cash as part of a criminal sentence for a failure-to-report offense is also justified as serving punitive purposes.

Forfeiture of the property used by a criminal in carrying out his offense is an inherently fitting penalty for a serious crime. The defendant, in such a case, has effectively set his own "fine" by electing to employ his property in furthering a criminal venture. No further analysis of a defendant's culpability (or of

the value of his property) is needed to uphold the proportionality of such a criminal forfeiture.

Even if criminal forfeiture were applied to property that is not significantly tied to the offense, the sanction would not automatically be excessive. The question in such a case would be the same as in an excessive fines challenge to a monetary sanction: whether the amount of the financial penalty is excessive in relation to the seriousness of the offense. The answer to that question, as with other Eighth Amendment questions, must give deference to the legislature's assessment of the seriousness of the crime and appropriate penalties.

Here, Congress's judgment to impose criminal forfeiture on the undeclared cash does not transgress constitutional bounds. The circulation of unreported cash throughout the world facilitates money laundering, tax evasion, and other illicit conduct. To address such serious harms, Congress has made it a felony for a person willfully to fail to report cash that is about to be exported, and has authorized a sentence of up to five years' imprisonment and a $250,000 fine. Including in the sentence the forfeiture of the very cash involved in the offense is not an excessive fine. Far from being excessively punitive, such a forfeiture is perfectly calibrated to the seriousness of the defendant's conduct since the amount of the fine increases in direct proportion to the amount that is concealed.

ARGUMENT

THE CRIMINAL FORFEITURE OF CURRENCY THAT IS ABOUT TO BE TRANSPORTED OUT OF THE UNITED STATES WITHOUT THE FILING OF A REQUIRED CURRENCY REPORT IS NOT AN EXCESSIVE FINE

The Eighth Amendment to the Constitution prohibits the imposition of "excessive fines." This Court has held that both *in personam* criminal forfeitures and civil *in rem* forfeitures are "fines" within the meaning of the Excessive Fines Clause. *Alexander* v. *United States*, 509 U.S. 544, 558 (1993) (*in personam* criminal forfeitures); *Austin* v. *United States*, 509 U.S. 602, 618-622 (1993) (civil *in rem* forfeitures). The Court has not, however, established a standard for determining when such forfeitures become constitutionally "excessive." *Alexander*, 509 U.S. at 559 (remanding for consideration of that issue); *Austin*, 509 U.S. at 622-623 (same).

The court of appeals in this case held that a forfeiture is constitutionally excessive unless it satisfies two conditions: (1) the property forfeited must be an instrumentality of the crime committed, *i.e.* the forfeited property must have a sufficient relationship to the illegal activity; and (2) the forfeiture must not be grossly disproportionate to the culpability of the owner. Pet. App. 5a; *United States* v. *6830 Little Canyon Road*, 59 F.3d 974, 982 (9th Cir. 1995). The Ninth Circuit applies that same test to both criminal and civil forfeitures. Pet. App. 5a (criminal); *6830 Little Canyon Road*, 59 F.3d at 982 (civil).

In our view, compliance with the Eighth Amendment does not require satisfaction of both conditions

set forth by the court of appeals. Instead, as a general matter, a criminal forfeiture complies with the Eighth Amendment as long as it satisfies either. Under the correct constitutional standard, the forfeiture of the currency involved in this case is not excessive.[1]

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[1] While the courts of appeals have differed somewhat in the way they have framed the legal analysis, they have almost uniformly rejected excessive fines challenges to forfeitures of property involved in federal criminal offenses. See *United States* v. *Tencer*, 107 F.3d 1120, 1135 n.7 (5th Cir. 1997); *United States* v. *One Parcel Property*, 106 F.3d 336, 338-339 (10th Cir. 1997) (per curiam); *United States* v. *829 Calle De Madero*, 100 F.3d 734, 736-739 (10th Cir. 1996); *United States* v. *One Parcel Property Located at Lot 85*, 100 F.3d 740, 744 (10th Cir. 1996), cert. denied, No. 96-1736, 1997 WL 220039 (June 2, 1997); *United States* v. *Elder*, 90 F.3d 1110, 1132-1133 (6th Cir.), cert. denied, 117 S. Ct. 529 (1996), 117 S. Ct. 993 (1997); *United States* v. *One 1970 36.9' Columbia Sailing Boat*, 91 F.3d 1053, 1057-1058 (8th Cir. 1996); *United States* v. *All Right, Title and Interest in Real Property and Appurtenances*, 77 F.3d 648, 658-659 (2d Cir.), cert. denied, 117 S. Ct. 67 (1996); *United States* v. *427 and 429 Hall Street*, 74 F.3d 1165, 1170-1173 (11th Cir. 1996); *United States* v. *11869 Westshore Drive*, 70 F.3d 923, 926-930 (6th Cir. 1995), cert. denied, 117 S. Ct. 57 (1996); *United States* v. *Buchanan*, 70 F.3d 818, 830-831 n.12 (5th Cir.), cert. denied, 116 S. Ct. 1340-1341, 1366 (1996); *United States* v. *Bieri*, 68 F.3d 232, 235-238 (8th Cir. 1995), cert. denied, 116 S. Ct. 1876 (1996); *United States* v. *Milbrand*, 58 F.3d 841, 845-848 (2d Cir. 1995), cert. denied, 116 S. Ct. 1284 (1996); *United States* v. *429 South Main Street*, 52 F.3d 1416, 1421-1422 (6th Cir. 1995); *United States* v. *Plescia*, 48 F.3d 1452, 1462 (7th Cir.), cert. denied, 116 S. Ct. 114, 329, 351, 556 (1995); *United States* v. *Chandler*, 36 F.3d 358, 362-366 (4th Cir. 1994), cert. denied, 514 U.S. 1082 (1995); *United States* v. *Myers*, 21 F.3d 826, 830-831 (8th Cir. 1994), cert. denied, 513 U.S. 1086 (1995). But see, *e.g.*, *United States* v. *18755 North Bay Road*, 13 F.3d 1493, 1498-1499 (11th Cir. 1994).

A. The Criminal Forfeiture Of Unreported Currency Is Not Excessive Because Unreported Currency Is An Essential Instrumentality Of An Unreported Currency-Transportation Offense

1. a. Since the First Congress, this nation's laws have provided for the forfeiture of property involved in certain offenses. The First Congress enacted customs laws that provided for the forfeiture of goods entered by false statements, goods unloaded at night or without a permit, concealed goods on which duties had not been paid, and relanded goods entitled to a drawback. Act of July 31, 1789, ch. 5, §§ 12, 23, 24, 34, 1 Stat. 39, 43, 46. The early customs laws also provided for the forfeiture of vessels involved in customs offenses. §§ 12, 40, 1 Stat. 39, 49. Under the early customs statutes, forfeiture did not depend on the value of the property or the culpability of the property owner; the property's involvement in the offense was sufficient.

"The historical importance of the enactment of [those] customs statute[s] by the same Congress which proposed the [Eighth] Amendment is * * * manifest." *United States* v. *Ramsey*, 431 U.S. 606, 616-617 (1977) (applying that analysis in upholding border searches under the Fourth Amendment). The necessary premise of the early customs laws is that the forfeiture of property involved in an offense is not an excessive fine. Those laws and the view of the Eighth Amendment they reflect are "contemporaneous and weighty evidence of [the Eighth Amendment's] true meaning." *Wisconsin* v. *Pelican Ins. Co.*, 127 U.S. 265, 297 (1888); see also *Bowsher* v. *Synar*, 478 U.S. 714, 723-724 (1986); *Marsh* v. *Chambers*, 463 U.S. 783, 790-791 (1983).

b. Congress has subsequently enacted numerous laws authorizing civil forfeiture of property involved in criminal offenses, and "contemporary federal * * * forfeiture statutes reach virtually any type of property that might be used in the conduct of a criminal enterprise." *Calero-Toledo* v. *Pearson Yacht Leasing Co.*, 416 U.S. 663, 683 (1974). In a long line of decisions, this Court has rejected Due Process and Double Jeopardy Clause challenges to the validity of such forfeitures. The Court has upheld the forfeiture of a variety of forms of property involved in offenses, including: vessels involved in piracy (*The Palmyra*, 25 U.S. (12 Wheat.) 1, 13 (1827); *United States* v. *Brig Malek Adhel*, 43 U.S. (2 How.) 210, 233-234 (1844)); a distillery and associated real and personal property when alcohol taxes were not paid (*Dobbins's Distillery* v. *United States*, 96 U.S. 395, 400-401 (1878)); an automobile used to transport liquor on which taxes had not been paid (*J.W. Goldsmith, Jr.-Grant Co.* v. *United States*, 254 U.S. 505, 508, 510-512 (1921)); undeclared imported gems (*One Lot Emerald Cut Stones* v. *United States*, 409 U.S. 232, 237 (1972)); unlicensed firearms (*United States* v. *One Assortment of 89 Firearms*, 465 U.S. 354, 364-366 (1984)); and real property used for growing marijuana (*United States* v. *Ursery*, 116 S. Ct. 2135, 2138-2139 (1996)).

As was true with the first customs laws, the forfeitures in later statutes were "fixed, not by determining the appropriate value of the penalty in relation to the committed offense, but by determining what property has been 'tainted' by unlawful use, to which issue the value of the property is irrelevant." *Austin*, 509 U.S. at 627 (Scalia, J., concurring in part and concurring in the judgment); see, *e.g.*, *The Palmyra*, 25 U.S. (12 Wheat.) at 14 ("The thing is here primarily considered as the offender, or rather the offence is attached primarily to the thing"); *United States* v. *Brig Malek Adhel*, 43 U.S. (2 How.) at 233 ("The vessel which commits the aggression is treated as the offender, as the guilty instrument or thing to which the forfeiture attaches, without any reference whatsoever to the character or conduct of the owner."); *Dobbins's Distillery*, 96 U.S. at 401 ("the offence * * * is attached primarily to the distillery, and the real and personal property used in connection with the same, without any regard whatsoever to the personal misconduct or responsibility of the owner"); *Goldsmith-Grant Co.*, 254 U.S. at 513 ("It is the illegal use that is the material consideration, it is that which works the forfeiture, the guilt or innocence of its owner being accidental."). Congress's 200-year practice of providing for the forfeiture of instrumentalities without a separate inquiry into the value of the property involved in the offense or the culpability of the owner "goes a long way in the direction of proving the presence of unassailable ground for the constitutionality of the practice." *United States* v. *Curtiss-Wright Export Corp.*, 299 U.S. 304, 328 (1936).[2]

[2] The early forfeiture cases do not employ the term "instrumentality" to describe the property involved in the offense. That term, however, fairly characterizes the range of property whose forfeiture is authorized because of the use or involvement of the property in a direct and substantial way in the offense (*i.e.*, conveyances used to transport contraband, real property used to carry out unlawful activity, property imported without proper declaration). See *United States* v. *92 Buena Vista Avenue*, 507 U.S. 111, 119-121 (1993) (plurality opinion).

c. The cases cited above, though addressing Due Process and Double Jeopardy claims, illuminate why Congress has never viewed instrumentality forfeitures as excessive fines. As those cases explain, the forfeiture of property involved in an offense, "while perhaps having certain punitive aspects, serves important nonpunitive goals." *Ursery*, 116 S. Ct. at 2148. Such a forfeiture both "encourages property owners to take care in managing their property," *ibid.*, and "prevent[s] further illicit use of the [property]," *Bennis* v. *Michigan*, 116 S. Ct. 994, 1000 (1996). See also *Calero-Toledo*, 416 U.S. at 687 (forfeiture of wrongfully used property "fosters the purposes served by the underlying criminal statutes, both by preventing further illicit use of the [property] and by imposing an economic penalty, thereby rendering illegal behavior unprofitable"); *89 Firearms*, 465 U.S. at 363 (forfeiture of unlicensed firearms discourages unregulated commerce and removes firearms intended for use outside regulated channels). Those "broad remedial aims," *Ursery*, 116 S. Ct. at 2142, are served by a forfeiture of property involved in an offense, regardless of the value of the property or the culpability of the owner.[3]

Because instrumentality forfeitures serve important remedial goals in a direct and material way, Congress has always viewed them as fair and appropriate sanctions, not "excessive fines." That considered judgment by Congress is reasonable and

[3] Forfeitures of instrumentalities of an offense can also serve as a reasonable form of liquidated damages to defray the government's costs of enforcement and the societal harms created by the activity in which the property is involved. See *One Lot Emerald Cut Stones*, 409 U.S. at 237. That purpose is implicated regardless of the culpability of the owner.

therefore entitled to deference. Cf. *Harmelin* v. *Michigan*, 501 U.S. 957, 998-999 (1991) (Kennedy, J., concurring in part and concurring in the judgment).

2. For the reasons discussed above—the persuasive force of the views of the First Congress, the weight of 200 years of congressional practice, and the reasonableness of Congress's judgment that instrumentality forfeitures represent appropriate remedial sanctions—traditional instrumentality forfeitures are not "excessive fines" within the meaning of the Eighth Amendment. Accordingly, in such cases, there is ordinarily no requirement of a separate inquiry into the value of the property or the culpability of the owner.[4]

a. The forfeiture of unreported currency involved in an offense is justifiable on an instrumentality theory. Section 5316 makes it unlawful to transport currency of more than $10,000 outside of the United States without filing a report with the Secretary of the Treasury. 31 U.S.C. 5316. A person who "willfully" violates that requirement commits a criminal offense, 31 U.S.C. 5322(a), and the undeclared cur-

[4] It is, however, appropriate to inquire into the degree of relationship that the property bears to the offense. An incidental or remote relationship between the property and the offense would not accord with the traditional applications of forfeiture doctrine described above. Such a relationship would therefore justify further analysis under the Excessive Fines Clause. See, *e.g.*, *Bennis*, 116 S. Ct. at 1000 (forfeiture of an ocean liner because of the activities of one of its passengers); *Austin*, 509 U.S. at 627-628 (Scalia, J., concurring in part and concurring in the judgment) (forfeiture of a building in which an isolated drug deal happens to occur). Absent a sufficient connection between the property and the offense as traditionally understood, the property may not fairly be described as an "instrumentality" of the offense.

rency is subject to mandatory forfeiture, 18 U.S.C. 982(a)(1). Such a forfeiture satisfies constitutional requirements, because the undeclared currency is an essential instrumentality of the offense. The currency that is transported in a reporting violation is "the very *sine qua non* of the crime." *United States* v. *United States Currency in the Amount of $145,139*, 18 F.3d 73, 75 (2d Cir.), cert. denied, 513 U.S. 815 (1994). For "without the currency, there can be no offense." Pet. App. 13a (Wallace, J., concurring in the judgment). Thus, unreported cash that is about to be exported does not merely facilitate a violation of law; there would be no violation at all without the exportation (or attempted exportation) of the cash. Accordingly, as the Second Circuit explained in *United States Currency in the Amount of $145,139*:

> Clearly, it is much more accurate to describe the currency as the means by which the crime was committed than it would be to so describe a house from which drugs had been sold or an automobile in which they had been transported. If, as we have held, a house can be considered an instrumentality of the crime, * * * we would be blinking reality if we held that the money in the instant case was any less an instrumentality.

18 F.3d at 75.

b. As with traditional instrumentality forfeitures, the forfeiture of undeclared currency also serves important remedial purposes. The government has an overriding sovereign interest in controlling what property leaves and enters this country. See *Ramsey*, 431 U.S. at 616-619. Reporting requirements are an essential means of serving that vital interest. The reporting requirement at issue here serves a particularly important function in deterring and investigating crime. Before the reporting requirement was imposed, criminal enterprises had been able to send money secretly out of the country either in furtherance of their criminal activities or for deposit in countries with secrecy laws, and thus were able to operate their financial affairs "with an impunity that approache[d] statutory exemption." H.R. Rep. No. 975, *supra*, at 12. Many other persons had sent money to foreign jurisdictions with secrecy laws for the purpose of evading taxes, leading to hundreds of millions of dollars in lost tax revenues. *Id.* at 12-13. And some corporate officials had enriched themselves at the expense of their companies and stockholders. *Id.* at 12. The reporting requirement not only deters illicit movements of cash, it also gives the government valuable information to investigate and detect criminal activities associated with that cash. By "singl[ing] out transactions found to have the greatest potential" for "circumvent[ing] the enforcement of the laws of the United States," see *California Bankers Ass'n* v. *Shultz*, 416 U.S. 21, 63 (1974), the reporting requirement provides the government with information that has "a high degree of usefulness in criminal, tax, or regulatory investigations or proceedings." 31 U.S.C. 5311.

The forfeiture of undeclared currency plays an important role in supporting the remedial purposes of the reporting requirement. It both encourages persons to inform the government that they are transporting more than $10,000 in cash outside the country and prevents such money from being used in circumvention of requirements in the future. A forfeiture of all the money involved in a reporting violation is also precisely tailored to the remedial purposes of

the reporting requirement. The dangers created by money that is secretly exported increase as the amount of money secretly exported increases: The greater the amount of money that is laundered or hidden overseas, the greater the potential harm to the people and the economy of this country. Thus, it is a fair and reasonable remedy to subject to forfeiture the cash that a person attempts secretly and unlawfully to export.

c. The forfeiture of currency involved in an undeclared currency violation also has deep historical roots. As noted above, since the First Congress, this nation's laws have provided for the forfeiture of goods involved in customs offenses. Those laws reflect the view that when property is imported without compliance with declaration and reporting requirements, it is a reasonable remedy to confiscate the property unlawfully imported.

In *One Lot Emerald Cut Stones*, *supra*, this Court held, in rejecting a claim under the Double Jeopardy Clause, that the civil forfeiture of such undeclared goods serves legitimate remedial ends. In that case, a defendant who entered the United States without declaring to United States Customs one lot of emerald cut stones and one ring was acquitted of criminal smuggling charges. 409 U.S. at 232-233. Following the acquittal, the government instituted a civil forfeiture proceeding against the stones and ring under a statute that authorized forfeiture of any article not included in a declaration prior to inspection. *Id.* at 233 & n.2. This Court held that the Double Jeopardy Clause did not bar the forfeiture proceeding, noting that the civil forfeiture served remedial rather than punitive purposes. *Id.* at 235-237. The Court explained that the forfeiture of undeclared property

"prevents forbidden merchandise from circulating in the United States, and, by its monetary penalty, it provides a reasonable form of liquidated damages for violation of the inspection provisions and serves to reimburse the Government for investigation and enforcement expenses." *Id.* at 237. "[S]uch purposes," the Court noted, "characterize remedial rather than punitive sanctions." *Ibid.*

This Court has made clear that the remedial characterization of such customs forfeitures applies equally under the Excessive Fines Clause. In *Austin*, the Court cited *One Lot Emerald Cut Stones* as an example of a remedial forfeiture, stating that "forfeitures of goods involved in customs violations" are justified as a remedial sanction and therefore are not excessive fines. *Austin*, 509 U.S. at 621.

The forfeiture of money involved in a reporting violation bears important similarities to the forfeiture of undeclared goods. Both actions reflect the government's sovereign interest in controlling what property leaves and enters this country. Both also encourage the reporting of information required for an important regulatory function: when goods are declared, the information determines their exposure to duties and their admissibility into the United States; when currency is reported, the information may be used to investigate and detect circumvention of our drug, tax, and other laws. Both kinds of forfeitures prevent circumvention of requirements in the future, and both "provide[] a reasonable form of liquidated damages for violation of the inspection provisions and serve[] to reimburse the Government for investigation and enforcement expenses." *One Lot Emerald Cut Stones*, 409 U.S. at 237. Finally, like undeclared goods, undeclared currency is the

very item hidden from the government and is therefore the central instrumentality of the offense. The forfeiture of undeclared currency therefore comes within the tradition in this country of remedial customs forfeitures.

d. The court of appeals sought to distinguish forfeiture of undeclared currency from forfeiture of undeclared goods on the ground that Section 5316(a) does not make unlawful "the illegal possession, transportation, or smuggling of dutiable items," but only "the failure to provide information." Pet. App. 7a-8a. That description of the offense is incomplete. The offense is not merely the failure to report, but the willful failure to file a report when "transport[ing] monetary instruments of more than $10,000 at one time * * * from a place in the United States to or through a place outside the United States." 31 U.S.C. 5316(a)(1); 5322(a). The essence of the offense is therefore smuggling money out of the country, not simply failing to provide information.

The court of appeals also believed that undeclared goods may be characterized as contraband, while undeclared currency cannot be. Pet. App. 8a. Undeclared currency and undeclared goods, however, cannot be distinguished on that ground. Both are generally lawful to possess; both become subject to seizure and forfeiture when an attempt is made to smuggle them unlawfully across the border. The Ninth Circuit found it significant that the failure to declare goods deprives the government of revenue in the form of duties, while the failure to report currency information deprives the government only of information. Pet. App. 8a. The harm to the government from reporting violations, however, though not always quantifiable, is considerable. Money is often

secretly exported in order to evade the payment of taxes. Such violations can lead to an incalculable loss in tax revenue. And, the economic power of much criminal activity depends on money laundering that secretly moves cash in and out of the country. Tracing the flow of currency plays a vital role in attacking global criminal activity. Given the major drain on the economy of such illicit financial activities, crimes that allow unreported dollars to circulate throughout the world inflict significant harm. Thus, money that is secretly exported out of this country produces "debilitating effects * * * on Americans and the American economy." H.R. Rep. No. 975, *supra*, at 12.

3. The currency in this case was subject to forfeiture in a criminal *in personam* proceeding rather than a civil *in rem* proceeding. That circumstance, however, does not alter the conclusion that the currency is an instrumentality whose forfeiture is justifiable as a reasonable remedial measure. Criminal sanctions are usually intended primarily to inflict punishment. But "nothing in the Constitution prevents the enforcement of distinctly remedial sanctions by a criminal instead of civil form of proceeding." *Helvering* v. *Mitchell*, 303 U.S. 391, 402 n.6 (1938). For example, an order requiring a person convicted of a crime to provide restitution to his victim serves the remedial goal of making the victim whole, regardless of whether the order is imposed in a civil or a criminal proceeding. See 18 U.S.C. 3663. Similarly, whether imposed in a civil or criminal proceeding, a forfeiture of the proceeds of an offense serves the remedial purpose "of ensuring that persons do not profit from their illegal acts," *Ursery*, 116 S. Ct. at 2149; *id.* at 2152 (Stevens, J., concurring in

the judgment in part and dissenting in part). The same reasoning applies to forfeitures of instrumentalities: Such forfeitures can serve the same remedial goals in criminal proceedings that they do in civil *in rem* proceedings.

The text of Section 982(a)(1) shows that Congress intended to rely on remedial as well as punitive goals when it mandated the criminal forfeiture of the currency at issue here. Section 982(a)(1) provides that, in imposing sentence for a reporting violation, the court shall order forfeiture of "any property, real or personal, involved in such offense." 18 U.S.C. 982(a)(1). As a general matter, property "involved in [the] offense" is a shorthand description for the kind of property historically subject to forfeiture in a civil *in rem* proceeding. See 134 Cong. Rec. S17,365 (daily ed. Nov. 10, 1988) (property involved in the offense includes the money involved in the offense, any commissions or fees paid to the person transporting the money, and property used to facilitate the offense). Indeed, the provision authorizing civil *in rem* forfeiture for reporting violations uses the same "involved in" language to identify the kind of property subject to forfeiture. 31 U.S.C. 5317(c) (referring to violation of 31 U.S.C. 5324(b), which in turn incorporates a failure to file a report required by Section 5316). By generally limiting the property subject to forfeiture to property that has traditionally been subject to forfeiture in civil *in rem* proceedings, Congress manifested its intent to further, among other things, traditional remedial ends.

In sum, the currency involved in an undeclared currency violation is subject to forfeiture as an instrumentality of the offense. Such a forfeiture is justifiable by remedial purposes, regardless of

whether the forfeiture occurs in a civil or a criminal proceeding. In view of the remedial goals served by this traditional form of forfeiture, the forfeiture of the unreported currency in this case is not an excessive fine.

B. The Criminal Forfeiture Of Unreported Currency Is Not Excessive Because Such A Forfeiture Is Commensurate With The Seriousness Of An Unreported Currency Offense

Quite apart from the instrumentality analysis described above, the forfeiture of unreported currency as a *criminal* sanction for a failure to report transportation of that currency is not an excessive fine. Although criminal forfeitures often may serve remedial purposes, they need not be justified solely in those terms. Such forfeitures may also be independently justified as punishment, so long as the punishment is not excessive in relation to the offense. Given respondent's decision to involve his money in a crime and the serious nature of the offense, the forfeiture of the currency involved in this case is not a disproportionate punishment.

1. a. The background of the Excessive Fines Clause shows that its principal concern was with the imposition of excessive monetary fines for punitive purposes. *Browning-Ferris Indus. of Vermont, Inc.* v. *Kelco Disposal, Inc.*, 492 U.S. 257, 266-267 (1989). The Excessive Fines Clause was modelled on a provision of the Virginia Declaration of Rights, which in turn was based on a provision of the English Bill of Rights. *Id.* at 266. The English version was intended to curb the excesses of English judges under the reign of James II. *Id.* at 267. During the reigns of the Stuarts, the King's judges imposed heavy fines on

the King's enemies, and later, the use of fines became even more excessive and partisan, forcing some opponents of the King to remain in prison because they could not pay the huge monetary penalties assessed. *Ibid.* Given that background of the Eighth Amendment, when Congress authorizes the imposition of a monetary fine solely as punishment, the most relevant constitutional inquiry is whether the value of the fine is excessive when compared to the seriousness of the offense. *Austin*, 509 U.S. at 627 (Scalia, J., concurring in part and concurring in the judgment).

The criminal forfeiture of property that the defendant has used or involved in a serious offense is a distinctive "fine," and will virtually always constitute a proportionate punishment. That is because the defendant, through his own actions, has put his property in the service of crime, and thereby has set the size of his own financial penalty. Confiscation of that property as part of his sentence is inherently proportionate to the violation.

b. But even if criminal forfeiture were authorized of property that had not been substantially or significantly devoted to the commission of the offense, such a "fine" would not automatically be excessive. When such a forfeiture is imposed as an *in personam* punishment for a criminal offense, it is "no different, for Eighth Amendment purposes, from a traditional [monetary] 'fine.'" *Alexander*, 509 U.S. at 558. Such a punitive forfeiture operates as an "in-kind" assessment. *Austin*, 509 U.S. at 624 (Scalia, J., concurring in part and concurring in the judgment). The appropriate inquiry would then be whether the value of the property is excessive when compared to the seriousness of the offense. *Id.* at 627; see *Alexander*, 509 U.S. at 558. Because the property in such a forfeiture

may be seen as equivalent to an ordinary monetary fine, there is no constitutional requirement that it have any particular relationship to the offense.

In such a case, a court has a limited role in determining whether a punitive forfeiture is constitutionally excessive. In this context, as in applying the Cruel and Unusual Punishment Clause, the Eighth Amendment "does not require strict proportionality between crime and sentence." *Harmelin*, 501 U.S. at 1001 (Kennedy, J., concurring in part and concurring in the judgment). Instead, it forbids only those fines that are "grossly disproportionate" to the seriousness of the offense. *Solem* v. *Helm*, 463 U.S. 277, 288 (1983). In conducting that inquiry, substantial deference must be given to Congress' judgment concerning the seriousness of the offense. *Harmelin*, 501 U.S. at 998-999 (Kennedy, J., concurring in part and concurring in the judgment). A court "should not substitute its judgment as to seriousness for that of a legislature, which is 'far better equipped to perform the task and [is] likewise more responsive to changes in attitude and more amenable to the recognition and correction of their misperceptions in this respect.'" *Blanton* v. *City of North Las Vegas*, 489 U.S. 538, 541-542 (1989).

2. a. Under the correct standard, the criminal forfeiture mandated in this case is not excessively punitive. First, the property subjected to forfeiture is the very money that respondent involved in his offense. Such a punishment thus fairly fits the crime without further inquiry into the value of the forfeited property. Second, to the extent that the value of the property bears on the excessiveness question, the "fine" here is proportionate.

Forfeiture of the undeclared cash is perfectly calibrated to the seriousness of the defendant's conduct since the amount of the fine increases in direct proportion to the amount that is concealed. *United States* v. *United States Currency in the Amount of $145,139*, 803 F. Supp. 592, 600 (E.D.N.Y. 1992), aff'd, 18 F.3d 73 (2d Cir.), cert. denied, 513 U.S. 815 (1994). And the offense itself is a serious one. Respondent was convicted of a willful violation of the reporting requirment. Respondent's conviction rests on an admission that he knew that it was unlawful to export more than $10,000 without filing a report and decided not to file such a report anyway. Congress authorized significant penalties for such a willful violation. In addition to mandating criminal forfeiture of the currency, Congress authorized as additional punishment a $250,000 fine and/or a five-year term of imprisonment. 31 U.S.C. 5322(a). Those authorized penalties are the best indication of Congress's view of the seriousness of the offense. See *Blanton*, 489 U.S. at 541, 542 ("In fixing the maximum penalty for a crime, a legislature 'include[s] within the definition of the crime itself a judgment about the seriousness of the offense'" and the maximum period of incarceration is "the most powerful indication" of that judgment).

Congress's judgment concerning the seriousness of a willful violation of the reporting requirement is well-founded. As previously discussed, Congress was aware that the secret export of large amounts of cash is often associated with money laundering, tax evasion, and other serious offenses. Congress reasonably determined that a reporting requirement was essential to deter and detect such activity and that willful violations of that requirement should result in strict punishment. See *United States* v. *O'Banion*,

943 F.2d 1422, 1432-1433 (5th Cir. 1991) (regulation of currency that crosses our borders is a "serious matter," and claim that classification of a reporting offense as a felony violates the Cruel and Unusual Punishment Clause is not "plausible").

In light of the seriousness of a willful violation of the reporting requirement, the forfeiture of the very money involved in that offense cannot be viewed as a "grossly disproportionate" punishment. In general, while "[p]enalties such as * * * a fine may engender 'a significant infringement of personal freedom,' * * * they cannot approximate in severity the loss of liberty that a prison term entails." *Blanton*, 489 U.S. at 542. If respondent were sentenced to a term of imprisonment, he could not seriously claim that his punishment was grossly disproportionate to the offense. See *O'Banion*, 943 F.2d at 1422. Because the forfeiture of the money concealed in the offense is a less severe penalty, any claim that it is excessively punitive is even less persuasive.

b. Nothing in the facts of this case suggests that forfeiture of the undeclared currency would be an excessive fine. Respondent violated the reporting requirement after a customs officer approached him and told him that he was required to file a report if he was intending to export more than $10,000 in currency. Respondent then deliberately lied about the amount of money in his possession, claiming that he had less than $10,000 when he was actually planning to export $347,144. After customs inspectors discovered the currency concealed by respondent and his wife, respondent admitted to agents that he knowingly and willfully failed to report the cash. Pet. App. 3a; Plea Agreement 7 (Oct. 27, 1994) (Stipulated Statement of Facts). Respondent then lied about

the source of the funds, providing three different explanations about it. Gov't Trial Mem. 5-6 (filed Nov. 28, 1994); Def. Trial Mem. 2-3 (filed Dec. 15, 1994). For that conduct, respondent was sentenced to three years' probation and fined $5,000. Particularly in light of the range of possible sentences that Congress contemplated, it cannot be excessively punitive to add to respondent's sentence a forfeiture of the very money he concealed.

c. That conclusion is not affected by the district court's finding that "even though it's a somewhat suspicious and confused story, documented in the poorest way, and replete with past misrepresentation," respondent obtained the funds from a legitimate source and intended to use them for a legitimate purpose. Pet. App. 17a-18a. Congress viewed willful violations of the reporting requirement as a serious offense, without regard to whether the government can prove that the defendant was violating or intending to violate other laws at the same time. Rather than viewing the presence of other violations as a necessary element of the offense, Congress regarded such additional violations as grounds for doubling the maximum penalties. In such cases, Congress authorized a fine of "not more than $500,000, imprison[ment] for not more than 10 years, or both." 31 U.S.C. 5322(b).

Congress's decision to mandate forfeiture for a willful reporting violation, whether or not additional violations are proven, was entirely reasonable. Deliberately violating an important criminal law is itself a serious matter, regardless of whether the dangers that the law is designed to prevent materialize. Moreover, if Congress had mandated forfeiture only in cases in which other violations of the law

could be proven, there would have been far less incentive for persons to comply with the reporting requirement in the first place. Those planning to export money for money laundering or tax evasion purposes would be far more willing to attempt to smuggle the cash if they knew that the money was not at risk unless the government could prove that their clandestine movement of the money was designed to further other violations of the law. Acceptance of respondent's asserted defense would therefore significantly undermine Congress's purposes.

d. It is also relevant to the constitutional inquiry in this case that Congress has left room for mitigation of a forfeiture in appropriate cases. Congress has authorized the Attorney General to "grant petitions for mitigation or remission of forfeiture, restore forfeited property to victims of a violation of this subchapter, or take any other action to protect the rights of innocent persons which is in the interest of justice and which is not inconsistent with the provisions of this section." 21 U.S.C. 853(i)(1) (applicable to forfeitures under 18 U.S.C. 982(a)(1) by reference to 18 U.S.C. 982(b)(1)). Congress could reasonably decide that the Attorney General is in the best position to decide when the mitigation of criminal forfeiture would not compromise legitimate law enforcement interests.

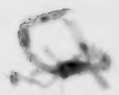
e. In sum, as long as Congress has made a reasonable judgment that the punishment fits the crime, judicial inquiry is at an end. *Harmelin*, 501 U.S. at 998-999, 1001 (Kennedy, J., concurring in part and concurring in the judgment); *Solem* 463 U.S. at 303. Congress's determination that forfeiture of undeclared funds is a fitting punishment for a willful

reporting violation, leaving to the Attorney General the power to decide when mitigation is warranted, is eminently reasonable and satisfies constitutional requirements.

CONCLUSION

The judgment of the court of appeals should be reversed and the case should be remanded for the imposition of a sentence that requires respondent to forfeit to the government the currency involved in his offense.

Respectfully submitted.



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APPENDIX

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The Eighth Amendment to the United States Constitution provides:

> Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.

Section 5316 of Title 31, United States Code, provides in relevant part:

> (a) Except as provided in subsection (c) of this section, a person or an agent or bailee of the person shall file a report under subsection (b) of this section when the person, agent, or bailee knowingly—
>
> > (1) transports, is about to transport, or has transported, monetary instruments of more than $10,000 at one time—
> >
> > > (A) from a place in the United States to or through a place outside the United States;
> >
> > * * *
>
> (b) A report under this section shall be filed at the time and place the Secretary of the Treasury prescribes. * * *

Section 5317(c) of Title 31, United States Code, provides in relevant part:

> (c) If a report required under section 5316 with respect to any monetary instrument is not filed (or if filed, contains a material omission or misstatement of fact), the instrument and any interest in property, including a deposit in a financial institution, traceable to such instrument may be seized and forfeited to the United States Government. Any property, real or personal, involved in a transaction or attempted transaction in violation of section 5324(b), or any property traceable to such property, may be seized and forfeited to the United States Government. * * *

Section 5321(a)(2) of Title 31, United States Code, provides:

> (2) The Secretary of the Treasury may impose an additional civil penalty on a person not filing a report, or filing a report containing a material omission or misstatement, under section 5316 of this title or a regulation prescribed under section 5316. A civil penalty under this paragraph may not be more than the amount of the monetary instrument for which the report was required. A civil penalty under this paragraph is reduced by an amount forfeited under section 5317(b) of this title.

Section 5322(a) of Title 31, United States Code, provides:

> (a) A person willfully violating this subchapter or a regulation prescribed under this subchapter (except section 5315 or 5324 of this title or a regulation prescribed under section 5315 or 5324) shall be fined not more than $250,000, or imprisoned for not more than five years, or both.

Section 5324(b)(1) of Title 31, United States Code, provides:

> (b) International monetary instrument transactions.—No person shall, for the purpose of evading the reporting requirements of section 5316—
>
> > (1) fail to file a report required by section 5316, or cause or attempt to cause a person to fail to file such a report;

Section 982(a)(1) of Title 18, United States Code, provides in part:

> The court, in imposing sentence on a person convicted of an offense in violation of section 5313(a), 5316, or 5324 of title 31, or of section 1956, 1957, or 1960 of this title, shall order that the person forfeit to the United States any property, real or personal, involved in such offense, or any property traceable to such property. * * *